

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

MARGARET A. CARTER, )  
                        )  
Plaintiff,           )  
                        )  
v.                     ) Civil Action No. 2:07cv00682-WKW  
                        )  
DIALYSIS CLINIC, INC., ) **JURY TRIAL DEMANDED**  
                        )  
Defendant.           )

**AFFIDAVIT OF DAN WATSON**

I, Dan Watson, after being duly sworn, state:

1. I am over twenty-one (21) years of age, and am otherwise competent to testify.

The following statement is a true and accurate account of my own personal knowledge and information.

2. At all relevant times, I have been employed with Dialysis Clinic, Inc. ("DCI") as Associate Director of Human Resources.

3. DCI is a not-for-profit corporation that provides treatment to patients with end-stage renal disease in both a chronic care setting (at stand-alone DCI clinics) and in an acute care setting (generally off-site at local hospitals). DCI provides dialysis treatment throughout the United States. The company's headquarters are located in Nashville, Tennessee.

4. DCI is an equal employment opportunity employer with well-known policies against unlawful discrimination and harassment. A copy of DCI's Equal Employment Opportunity Policy is attached hereto as Exhibit A. DCI expressly encourages employees with questions or concerns about any type of discrimination in the workplace to bring those issues to the attention of their supervisors, the Administrator, or the Corporate Human Resources

Department. The policy assures employees that they can raise their concerns and make reports without fear of reprisal. The policy, furthermore, provides that "anyone found to be engaging in any type of unlawful discrimination will be subject to disciplinary action up and including termination of employment."

5. Throughout Plaintiff's employment, DCI had a written Family and Medical Leave Act ("FMLA") Policy. A copy of that policy is attached hereto as Exhibit B. DCI included a thorough explanation of the FMLA in its handbook and, as a standard practice, provided a copy of that handbook to all employees.

6. DCI hired Margaret Carter as a staff nurse at its clinic in Union Springs, Alabama in 2000. The Union Springs clinic was a small clinic. During 2005, there were approximately 4 full-time nurses assigned to the clinic. Mr. Lee Ashbury, Jr., who is now deceased, was responsible for the day-to-day operation of several DCI clinics in Alabama, including the clinic in Union Springs.

7. In July of 2005, Mr. Ashbury advised me that Ms. Carter had exhausted all FMLA leave and all personal leave to which she was entitled. He informed me that her physician had not released her to return to her full-time job as Charge Nurse. He explained that the full-time nurses at Union Springs were working 12-13 hour shifts, 3 days per week. He advised me that Ms. Carter had asked about working eight hours per day. I told him that we did not have to allow her to work eight hours per day. I also advised him that discharge was appropriate if, after the exhaustion of all available leaves of absence, Ms. Carter could only work eight hours per day.

FURTHER AFFIANT SAITH NOT.

  
\_\_\_\_\_  
DAN WATSON

STATE OF TENNESSEE                  )  
    )  
COUNTY OF DAVIDSON                )

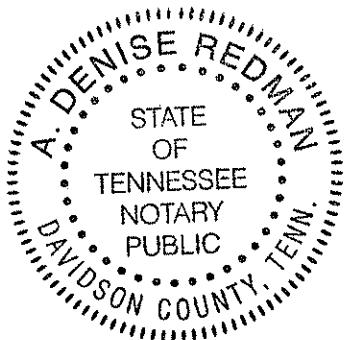
Personally appeared before me, a Notary Public in and for said County and State, the within named Dan Watson, who, after having been duly sworn, executed the foregoing Affidavit for the purposes therein contained.

WITNESS my hand and official seal this 10<sup>th</sup> day of June, 2008.

A. Denise Redman  
NOTARY PUBLIC

My Commission Expires:

My Commission Expires NOV. 14, 2009



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**CERTIFICATE OF SERVICE**

I hereby certify that on the 13<sup>th</sup> day of June, 2008 a copy of the foregoing Affidavit of Dan Watson was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to

John D. Saxon  
Russell P. Parker  
Attorneys for Plaintiffs  
2119 Third Avenue North  
Birmingham, AL 35203

Parties may access this filing through the Court's electronic filing system.

s/Davidson French

## EQUAL EMPLOYMENT OPPORTUNITY



In order to provide equal employment and advancement opportunities to all individuals, employment decisions at DCI will be based on merit, qualifications, and abilities. DCI does not discriminate in employment opportunities or practices on the basis of race, color, religion, sex, national origin, age, disability, or any other characteristic protected by law.

DCI will make reasonable accommodations for qualified individuals with known disabilities unless doing so would result in an undue hardship. This policy governs all aspects of employment, including selection, job assignment, compensation, discipline, termination, and access to benefits and training.

As an employee, you are not to show prejudice or discrimination in matters concerning patients, visitors, or fellow employees under any circumstances.

Any employees with questions or concerns about any type of discrimination in the work place are encouraged to bring these issues to the attention of their immediate supervisor, the Administrator or the Corporate Human Resources Department. Employees can raise concerns and make reports without fear of reprisal. Anyone found to be engaging in any type of unlawful discrimination will be subject to disciplinary action up to and including termination of employment.

With these objectives of individual and organizational conduct in mind, we are committed to equal employment opportunity, actively seeking and contacting all sources of manpower in the community. We welcome all qualified applicants.

## UNLAWFUL HARASSMENT

DCI is committed to providing a work environment that is free of discrimination and unlawful harassment. Actions, words, jokes, or comments based on an individual's sex, race, ethnicity, age, religion, or any other legally protected characteristic will not be tolerated. Harassment (both overt and subtle) is a form of employee misconduct that is demeaning to another person, undermines the integrity of the employment relationship, and is strictly prohibited. Anyone engaging in unlawful harassment will be subject to severe discipline up to and including termination of employment.

Any employee who feels victimized by any type of unlawful harassment is urged to promptly report the matter in confidence to his or her supervisor. If the supervisor is unavailable or the employee believes it would be inappropriate to contact that person, the employee should contact the facility Administrator, the Corporate Human Resources Department or DCI's President.

Any supervisor who becomes aware of possible unlawful harassment should promptly advise the facility Administrator who will assure that the matter is thoroughly and discreetly investigated.

## FAMILY AND MEDICAL LEAVE OF ABSENCE POLICY



Employees who have worked for DCI for at least 12 months and at least 1,250 hours during the prior 12 months preceding the start of the leave may take up to 12 weeks of unpaid leave for any one of the following reasons:

1. Birth and/or care of a child of the employee (expires 12 months after birth);
2. Placement of a child into the employee's family by adoption or by a foster care arrangement (expires 12 months after placement);
3. In order to care for the employee's spouse, child, or parent who has a serious health condition; or
4. A serious health condition which renders the employee unable to perform the essential functions of the employee's position.

In the case of unpaid leave for the birth of and/or care for a child, intermittent leave or working a reduced number of hours is not permitted unless both the employee and DCI agree.

In case of unpaid leave for serious health conditions, the leave may be taken intermittently or on a reduced hours basis only if such leave is certified as being medically necessary.

If intermittent or reduced hours leave is required, DCI may at its sole discretion temporarily transfer the employee to another job with equivalent pay and benefits that better accommodates that type of leave.

During a FMLA leave, coverage under DCI's group health, life, accidental death and dismemberment, and long-term disability plans will be continued provided the employee continues to pay any applicable employee contribution. Failure by the employee to pay such contribution before the expiration of a 30-day grace period will result in loss of coverage. If the employee does not return to work after the expiration of the leave, the employee will be required to reimburse DCI for total payment of insurance premiums during the FMLA leave, unless the employee does not return due to a serious health condition which prevents the employee from performing their essential job functions with reasonable accommodation or circumstances beyond the control of the employee.

Employees are required to use any earned but unused vacation or bonus holiday hours as part of the approved period of leave. The only exception to this will be for employee's on an FMLA that is the result of a claimed worker's comp injury.

Employee's are required to use sick time if the FMLA is for the birth of a child, to care for the employee's spouse, child, or parent who has a serious health condition; or a serious health condition which renders the employee unable to perform the essential functions of the employee's position.

A maximum of twelve weeks' leave may be taken for any and all of the above reasons during any 12-month period

measured backward from the date an employee uses any FMLA leave (but not extending back before August 5, 1993).

Employees who return to work from a FMLA leave within or on the business day following the expiration of the 12 weeks are entitled to return to their job or an equivalent position without loss of benefits, pay or status.

Benefit accruals, such as vacation, sick leave, or holiday time, will be suspended during the leave, and the employee's evaluation date will be extended by a period equal to the duration of the leave. Any employee who is on a leave of absence at the end of the calendar year will not be entitled to receive pay for any unused sick time, employee's on a leave of absence when Year End Bonuses are paid the following criteria will be used:

1. No year end bonuses will be paid to anyone not working for DCI the day the bonus checks are passed out. (If an individual is no longer a DCI employee when the checks are passed out they will not receive a bonus.)
2. An employee must have worked at least 6 months of the bonus qualifying period (DCI fiscal year) in order to participate in the bonus program for that year. An employee with less than 6 months service in the bonus period, may be paid a bonus at the discretion of the Administrator.
3. If an employee is on a Leave of Absence at the time year end bonuses are paid they will not receive a bonus

until they have returned to an active status with DCI and have worked their regular shift for 90 calendar days.

Application for FMLA leave must be submitted in writing. Employees are required to give DCI at least 30 days advance notice before a family and medical leave begins if the need for the leave is based on pregnancy, adoption, foster care placement or planned medical treatment. If such notice is not possible, notice must be given as soon as is practicable but at the very least within two days after the need for leave becomes known to the employee. The written application must be submitted to the Facility Administrator to initiate leave. Employees requesting medical leave should provide DCI with an appropriate medical certification from a licensed physician. DCI has the right to verify this medical certification or to request a second opinion from a DCI appointed physician. Periodic recertifications may be required to be submitted at 30 day intervals.

Before an employee will be permitted to return to work from medical or maternity leave of absence, you must provide evidence from your doctor that you are physically able to perform the essential functions of your job with or without reasonable accommodation. If, at the time you are released by your doctor, you are offered a job and refuse, your employment will be terminated at that time.

No pyramiding of leave is permitted. An eligible employee is permitted a total of 12 weeks during any 12 month period. Leaves granted under this policy will be identified as family

and medical leave and counted against the Family and Medical Leave Act entitlement.

NOTE: This policy is intended to follow the regulations adopted under the federal Family and Medical Leave Act of 1993. To the extent that any matters not covered under this policy arise, DCI will look first to these regulations for appropriate action.